

(2) Any declaration made under sub-section (1) shall be published in the official Gazette.

(3) The Custodian may, pending determination of the question whether any person is an intending evacuee or otherwise, attach in the prescribed manner any property in the Province in which such person has a right or interest, and during the pendency of such attachment, the property shall be incapable of being transferred or charged in any way, except with the leave of the Custodian, and no person shall be capable of taking any benefit from such transfer or charge except with such leave.

20. Consequences of declaration that a person is an intending evacuee.—No person, in respect of whom a declaration has been made under section 19 that he is an intending evacuee, shall transfer in any manner whatsoever any immovable property, in which he has any right or interest, situated in any part of the territories to which this Act extends, except with the previous approval of the Custodian, and any transfer made in contravention of the provisions of this section shall be void and of no effect.

21. Powers of Custodian generally in respect of property of intending evacuees.—For the purposes of preserving any property in which any person in respect of whom a declaration has been made under section 19 that he is an intending evacuee has any right or interest, the Custodian may,—

- (a) by order in writing, require any such person to furnish such returns, accounts or other information in relation to any such property and to produce such documents in his possession as the Custodian may require;
- (b) inspect the books of account or other documents maintained by or in the possession of such person;
- (c) pass such orders or direct such action to be taken in relation to any such property as may be considered by him to be necessary;
- (d) by order in writing, prohibit the transfer to Pakistan of any sum of money belonging to any such person or permit such transfer subject to such conditions and restrictions as the Custodian may think fit to impose.

22. Effect of intending evacuee contravening any provision of this Chapter.—If any person, in respect of whom a declaration has been made under section 19 that he is an intending evacuee, makes any transfer of any property in contravention of section 20 or fails to comply with

any order made under clause (c) or clause (d) of section 21, the Custodian may, by notification in the official Gazette, declare any property situated in the Province in which any such person has any right or interest to be evacuee property, and on the issue of such notification any property specified in the notification shall be deemed to be evacuee property which has vested in the Custodian within the meaning of this Act.

23. Intending evacuee acquiring evacuee or abandoned property in Pakistan for inadequate consideration to make good the deficiency.—(1)

Where any person in respect of whom a declaration has been made under section 19 that he is an intending evacuee has either personally or through any member of his family acquired, whether before or after the commencement of this Act, any right to, interest in, or benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan for a consideration which, in the opinion of the Custodian is neither reasonable nor adequate, the Custodian may, after notice to such person and after affording him a reasonable opportunity of being heard and after holding such inquiry as the circumstances of the case permit, determine, by order in writing, the amount, if any, by which the consideration, in his opinion, falls short of the real value of the property so acquired, and require such person to pay the amount to the Custodian within such time as may be specified in the order.

(2) If the amount is not paid within the time specified, or within such further time as the Custodian may allow, the Custodian may take possession of so much of the property of such intending evacuee as would be sufficient to cover the amount in the case of movable property, or as would afford a reasonable security for the recovery of the amount in the case of immovable property.

(3) The Custodian may, for the purpose of realising any amount payable by such intending evacuee under the provisions of this section, transfer in any manner whatsoever any immovable property which has been taken possession of by him under sub-section (2).

CHAPTER V.

APPEALS, REVIEW AND REVISION.

24. Appeals from orders under sections 7, 16, 19 and 38.—(1) Any person aggrieved by an order made under section 7, section 16, section 19 or section 38 may prefer an appeal in such manner and within such time as may be prescribed,—

(a) to the Custodian, where the original order has been passed by a Deputy or Assistant Custodian ;

(b) to the Custodian-General; where the original order has been passed by the Custodian, and Additional Custodian or an Authorised Deputy Custodian :

Provided that where the appeal is preferred on the ground that the person aggrieved is not an evacuee within the meaning of sub-clause (iii) of clause (d) of section 2, or that the property is not evacuee property within the meaning of sub-clause (2) of clause (f) of section 2, the appeal shall be preferred in the manner prescribed in section 25.

(2) The Custodian to whom an appeal is preferred under clause (a) of sub-section (1) may dispose of it himself or may make it over for disposal to an Additional Custodian or to a Deputy Custodian authorised by the Custodian in writing in this behalf (in this Chapter referred to as the Authorised Deputy Custodian):

Provided that no appeal from an order of a Deputy Custodian shall be made over for disposal to the Authorised Deputy Custodian.

25. Appeals from other orders.—(1) Any person aggrieved by an order,—

(a) under section 7 notifying his property as evacuee property on the ground that he is an evacuee within the meaning of sub-clause (iii) of clause (d) of section 2, or that the property is evacuee property within the meaning of sub-clause (2) of clause (f) of section 2, or

(b) under section 22 declaring any property of an intending evacuee to be evacuee property,

may prefer an appeal, in such manner and within such time as may be prescribed, to the District Judge nominated in this behalf by the Provincial Government.

(2) For the purpose of hearing any appeal under sub-section (1) the Provincial Government shall nominate one or more District Judges and define the local limits of their jurisdiction.

26. Powers of review or revision of Custodian, etc.—(1) The Custodian, Additional Custodian or Authorised Deputy Custodian may at any time, either on his own motion or on application made to him in this behalf, call for the record of any proceeding under this Act which is pending before, or has been disposed of by, an officer subordinate to him for the purpose of satisfying himself as to the legality

or propriety of any orders passed in the said proceeding, and may pass such order in relation thereto as he thinks fit :

Provided that the Custodian, Additional Custodian or Authorised Deputy Custodian shall not pass an order under this sub-section revising or modifying any order prejudicial to any person without giving such person a reasonable opportunity of being heard :

- Provided further that if one of the officers aforesaid takes action under this sub-section, it shall not be competent for any other officer to do so.

(2) The Custodian, Additional Custodian or Authorised Deputy Custodian (but not a Deputy or an Assistant Custodian) may, after giving notice to the parties concerned, review his own order.

27. Powers of revision of Custodian-General.—(1) The Custodian-General may at any time, either on his own motion or on application made to him in this behalf, call for the record of any proceeding in which any District Judge or Custodian has passed an order in appeal under the provisions of this Chapter for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit :

Provided that the Custodian-General shall not pass an order under this sub-section prejudicial to any person without giving him a reasonable opportunity of being heard.

(2) Notwithstanding anything contained in sub-section (1), where in respect of any proceeding called for under sub-section (1), the Custodian-General is of opinion that the District Judge is in error in holding any person not to be an evacuee or any property not to be evacuee property, he shall not pass any order in relation thereto but shall refer the matter, with his own opinion thereon, to the High Court to which the District Judge is otherwise subordinate.

(3) Any reference made under sub-section (2) shall be heard by a Bench of the High Court consisting of not less than two Judges and the Custodian-General shall dispose of the proceeding in accordance with the decision of the High Court.

28. Finality of orders under this Chapter.—Save as otherwise expressly provided in this Chapter, every order made by the Custodian-General, District Judge, Custodian, Additional Custodian, Authorised Deputy Custodian, Deputy Custodian or Assistant Custodian shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceeding.

CHAPTER VI.

PENALTIES AND PROCEDURE.

29. Penalty for failure to surrender possession of evacuee property.—Any person who fails to comply with a notice or demand by or on behalf of the Custodian under the provisions of this Act to surrender possession of any evacuee property shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

30. Penalty for concealing evacuee property.—Any person who wilfully conceals any property which he knows or has reason to believe to be evacuee property shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

31. Penalty for causing damage to evacuee property.—Any person who wilfully destroys or causes damage to any evacuee property or unlawfully converts it to his own use shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

32. Penalty for false declaration in certain cases.—Any person, who—

- (i) for the purpose of obtaining an allotment or lease of any evacuee property, makes a declaration or statement which is false or which he either knows or has reason to believe to be false, or does not believe to be true, or
- (ii) furnishes any return, account of information which is material to any of the purposes of this Act and which is false or which he either knows or has reason to believe to be false or does not believe to be true,

shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

33. Penalty for offences not expressly provided for.—Whoever contravenes any provision of this Act or of any rule or order made thereunder, or obstructs the lawful exercise of any power conferred by or under this Act shall, if no express provision is made by this Act for the punishment of such contravention or obstruction, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

34. Penalty for abetment.—Whoever abets any of the offences punishable under this Act shall be punishable with the punishment provided for the offence.

35. Offences to be cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), all offences under this Act shall be cognizable.

36. Procedure for prosecution.—No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Provincial Government or of any officer authorised in this behalf, by general or special order, by the Provincial Government.

37. Offences may be tried summarily.—Any Magistrate empowered to try in a summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1898 (Act V of 1898), may, if an application is made in this behalf by the complainant and the Magistrate thinks fit, try any offence under this Act in accordance with the provisions contained in sections 262 to 265 of that Code, but nothing contained in sub-section (2) of section 262 of that Code shall apply to any such trial.

CHAPTER VII.

MISCELLANEOUS.

38. Restriction on transfer by evacuees.—(1) No transfer of any right or interest in any property made in any manner whatsoever after the 14th day of August, 1947, by or on behalf of an evacuee or by or on behalf of a person who has become an evacuee after the date of the transfer, shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian.

(2) An application for confirmation of such transfer may be made by the transferor or the transferee or any person claiming under, or lawfully authorised by, either of them to the Custodian within two months from the date of transfer or within two months from the commencement of this Act, whichever is later.

(3) The provisions of section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to an application under sub-section (2).

(4) The Custodian shall hold an inquiry into the application in the prescribed manner and may reject the application, if he is of opinion that—

(a) the transaction has not been entered into in good faith or for valuable consideration, or

(b) the transaction is prohibited under any law for the time being in force, or

(c) the transaction ought not to be confirmed for any other reason.

(5) If the application is not rejected under sub-section (4), the Custodian may confirm the transfer either unconditionally or subject to such terms and conditions as he thinks fit to impose.

39. Prohibition of registration of documents in certain cases.—(1)

Where any document required to be registered under the Indian Registration Act, 1908 (XVI of 1908), purports to transfer any right or interest in any property in contravention of the provisions contained in section 20 or section 38, no registering officer shall register any such document and no revenue officer shall sanction any mutation of names in respect thereof, unless the party presenting the document for registration produces a certificate from the Custodian declaring that the property is not property belonging to an intending evacuee or that it is not evacuee property or that the transaction has been confirmed or that the Custodian has given his previous approval to the transfer.

(2) Save as otherwise expressly provided herein, nothing contained in sub section (1) shall be deemed to affect the provisions contained in the Payment of Taxes (Transfer of Property) Act, 1949 (XXII of 1949), or in any other law for the time being in force relating to the registration of documents.

40. Custodian's right to take possession not affected by death of evacuee, etc.—Where in pursuance of the provisions of this Ordinance, the Custodian has taken possession of any evacuee property, such possession shall not be deemed to be wrongful, nor shall anything done in consequence thereof be deemed to be invalid or affected by reason only that at the material time the evacuee who had a right or interest in the property had died or had ceased to be an evacuee.

41. Certain officers to be public servants.—The Custodian-General, the Custodian and every other person duly appointed to discharge any duties imposed on them by this Act or the rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

42. Powers of the Custodian while holding inquiry.—For the purposes of holding any inquiry under this Act, the Custodian shall have the same powers as are vested in a civil Court under the Code of Civil

Procedure, 1908 (Act V of 1908), when trying a suit, in respect of the following matters, namely :—

- (a) enforcing the attendance of any person and examining him on oath ;
- (b) compelling the discovery and production of documents ;
- (c) any prescribed matter ;

and the inquiry by the Custodian shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860), and the Custodian shall be deemed to be a Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

43. Jurisdiction of civil Courts barred in certain matters.—Save as otherwise expressly provided in this Act, no civil Court shall have jurisdiction—

- (a) to entertain or adjudicate upon any question whether any property is or is not evacuee property or whether an evacuee has or has not any right or interest in any evacuee property ; or
- (b) to entertain or adjudicate upon any question whether any person is or is not an intending evacuee ; or
- (c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act ; or
- (d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine.

44. Protection of action taken in good faith.—(1) No suit, prosecution or other legal proceeding shall lie against the Custodian-General or the Custodian or any person acting under the direction of the Custodian in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

(2) No suit or other legal proceeding shall lie against the Central Government, the Provincial Government, the Custodian-General or the Custodian or any other person in respect of any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

45. Recovery of arrears.—Any sum due to the Provincial Government or to the Custodian under the provisions of this Act may be recovered as if it were an arrear of land revenue.

46. Record to be public documents.—All records prepared or registers maintained under this Act shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872 (I of 1872), and shall be presumed to be genuine until the contrary is proved.

47. Notice of suits to the Custodian.—(1) If in any suit it appears to the civil or revenue Court that a question relating to the property of an evacuee or an intending evacuee is involved, the Court shall not proceed to determine that question until after notice has been given to the Custodian.

(2) A Court may, at any stage of a suit or proceeding, either on its own motion or on application made in this behalf by the Custodian, make an order that the Custodian shall be added as a party to the suit or proceeding, if the Court is satisfied that such addition is necessary or proper for the satisfactory determination of the suit or proceeding.

48. Fees payable to the Custodian.—(1) The Provincial Government may fix the fees payable to the Custodian for the management or disposal of any property vested in him.

(2) Such fees shall be payable out of the income or sale proceeds of such property and shall be a first charge on the property.

49. Power to exempt.—The Central Government may, by notification in the official Gazette, exempt any person or class of persons or any property or class of property from the operation of all or any of the provisions of this Act.

50. Power to give directions.—The Central Government may give directions to any Provincial Government as to the carrying into execution in the Province of any of the provisions contained in this Act or of any rules or orders made thereunder.

51. Power of Central Government to take action with regard to evacuee property.—The Central Government may, for the purpose of regulating the administration of any property which has vested in the Custodian under the provisions of this Act, pass such order or direct such action to be taken in relation thereto as, in its opinion, the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act.

52. Delegation of powers.—(1) The Central Government may direct that any power exercisable by it under this Act shall be exercisable also by such officer or authority subordinate to the Central

Government or by the Provincial Government or by such officer or authority subordinate to the Provincial Government as may be specified in the direction.

(2) The Provincial Government may, by general or special order, direct that any power exercisable by it under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised by an officer subordinate to the Provincial Government.

(3) Subject to the provisions of this Act and the rules and orders made thereunder, the Custodian may delegate all or any of his powers under this Act to any Additional, Deputy or Assistant Custodian, subject to such conditions, if any, as may be specified by the Custodian.

53. Power to make rules.—(1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the terms and conditions of service of the Custodian-General and other officers appointed by him in the discharge of his duties;
- (b) the manner in which inquiries under this Act may be held;
- (c) the manner in which evacuee properties which have vested in the Custodian may be notified;
- (d) the manner in which possession of any evacuee property may be taken by the Custodian;
- (e) the manner in which any attachment may be made by the Custodian;
- (f) the manner in which trust properties which have vested in the Custodian may be administered or otherwise dealt with;
- (g) the circumstances in which, and the conditions subject to which, the Custodian may sell any immovable property vested in him, and the procedure governing the grant of leases and the period for which leases may be granted;
- (h) the circumstances in which leases and allotments may be cancelled or terminated or the terms of any lease or agreement varied;